



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenant confirmed that they received the landlords' 1 Month Notice posted on the tenant's door on May 13, 2019, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. The tenant testified that they posted a copy of their dispute resolution hearing package and written evidence on the landlords' door on May 24, 2019. While posting written evidence on a door is a permitted way to serve written evidence in accordance with section 88 of the *Act*, section 89 of the *Act* does not allow for service of an application for dispute resolution by this method of service.

As both parties confirmed having received one another's written evidence, I find that their written evidence has been duly served in accordance with the *Act*. Although the landlord testified that they did not receive a copy of the tenant's dispute resolution hearing package by a way prescribed pursuant to section 89 of the *Act*, they did receive the package. I find that the landlord was sufficiently served with this package in accordance with section 72 of the *Act*.

Issues(s) to be Decided

Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession? Is the tenant entitled to recover the filing fee for this application from the landlords?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous documents and written evidence, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings are set out below.

On June 16, 2018, the parties signed a one year fixed term Residential Tenancy Agreement (the Agreement) for a tenancy that was to run from July 1, 2018 until June 30, 2019. According to the terms of that Agreement, entered into written evidence, monthly rent is set at \$1,200.00, payable in advance on the first of each month. The landlords continue to hold the tenant's \$600.00 security deposit paid on July 1, 2018.

The parties entered into written evidence a copy of the landlords' 1 Month Notice, requiring the tenant to end this tenancy by June 30, 2019. The landlords confirmed that they had accepted the tenant's payment for July 2019, enabling the tenant to remain in this rental unit for July 2019, the month after the effective date of their 1 Month Notice. In the 1 Month Notice, the landlords cited the following reasons for the issuance of the Notice:

*Tenant is repeatedly late paying rent.*

*Tenant or a person permitted on the property by the tenant has:*

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

In their written evidence, the tenant maintained that the landlords were not acting in good faith in issuing the 1 Month Notice. They maintained that the true reason for the landlords' attempt to end this tenancy for cause was to enable the landlords to complete renovations to the rental unit before they return to their vacation home abroad. The

tenant also alleged that the landlords had given their verbal agreement to allow them to pay their monthly rent late on every occasion when this occurred, despite the wording of the Agreement which stipulated that monthly rent was due on the first of each month. The tenant maintained that these verbal agreements were akin to a written agreement. The tenant also referenced the landlords' acceptance of each of the tenant's rent payments by direct deposit as evidence that the landlords had given their verbal agreement to allow the tenant to pay rent late. The tenant also referred to text messages to and from the landlords, which the tenant maintained provided further proof of their verbal agreement.

The tenant advised that they had reviewed the relevant portion of the Residential Tenancy Branch (RTB) Policy Guideline on the late payment of rent. The tenant maintained that they had not been late in paying their rent very often and that there had been significant gaps in these late payments. The tenant asserted that the landlords had failed to take timely action to address late payments of rent from 2018.

The confirmed that they paid rent on the following dates during this tenancy:

<b>Rent Due</b>	<b>Rent Paid</b>	<b>Amount</b>
July 1, 2018	July 3	\$1,000.00
	July 6	200.00
September 1, 2018	Sept. 1	1,000.00
	Sept. 2	200.00
December 1, 2018	Dec. 7	1,200.00
January 1, 2019	Jan. 2	925.00
	Jan. 4	225.00
May 1, 2019	May 1	600.00
	May 9	600.00

The tenant's written evidence included other material relating to renovations and other matters that have no bearing on whether the landlords had valid reasons for issuing the 1 Month Notice.

Both landlords gave sworn testimony that they had never entered into any form of oral agreement to allow the tenant to pay monthly rent late. Landlord KJB (the landlord) gave undisputed sworn testimony that they advised the tenant on the first two of the late payments that monthly rent was due on the first of each month and that they fully expected full rent payments to be made on the first and in accordance with their

Agreement. Although they accepted the tenant's late payments, they said that monthly rent was paid by direct deposit. The landlord gave undisputed sworn testimony that almost all communication with the tenant was by text message, and that the tenant did not seek their permission to pay rent late. Rather, the landlord testified that the tenant repeatedly advised them that they were "short" rent and would be paying the remainder of that month's rent later.

The landlord corrected information provided in an Addendum to the 1 Month Notice, as they said that they later discovered that the tenant's direct deposit payment of \$1,200.00 for February 2019 had been posted on February 1, 2019 and not February 2, 2019, as was originally noted on that Addendum.

### Analysis

Section 47 of the *Act* contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice. As I noted at the hearing, this tenancy could end on the basis of any one of the above four reasons identified in the landlords' 1 Month Notice.

Although the tenant maintained that the landlords had given them oral notice of their intention to end this tenancy for landlord's use of the property so as to convert the tenant's rental suite into a recreation room, the landlords issued no 2 Month Notice to End Tenancy for Landlord's Use of Property (a 2 Month Notice). Only upon receipt of a 2 Month Notice is there a requirement that a landlord act in good faith with respect to the reasons stated in that Notice. As noted below, section 47(1) of the *Act*, the statutory basis for issuing a 1 Month Notice contains no requirement that a landlord act in good faith in the issuance of that Notice;

### ***Landlord's notice: cause***

***47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:***

***(b) the tenant is repeatedly late paying rent;...***

*(d) the tenant or a person permitted on the residential property by the tenant has*

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*
- (iii) put the landlord's property at significant risk;*

In considering this application, I have taken into account the following wording of RTB Policy Guideline 38, which provides guidance to arbitrators in interpreting what constitutes the late payment of rent:

*The Residential Tenancy Act<sup>1</sup> and the Manufactured Home Park Tenancy Act<sup>2</sup> both provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent.*

*Three late payments are the minimum number sufficient to justify a notice under these provisions.*

*It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late*

*A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision...*

In this case, there is conflicting sworn testimony with respect to whether the parties entered into an oral agreement enabling the tenant to pay monthly rent after the first of each month. Although both parties referenced text messages in support of their sworn testimony, neither party entered into written evidence copies of these text messages. The landlords gave emphatic sworn testimony that the tenant had never sought their permission to pay monthly rent late. They maintained that when the tenant was unable to pay all of the rent, they usually received a text message from the tenant advising them that they were short in their rent but would be paying the remainder on some date after the first of the month. The tenant asserted that the parties had an agreement that allowed the tenant to pay rent late and that their acceptance of late payments confirmed this verbal agreement.

In such circumstances, I find the best evidence is that which was included in the written Agreement between the parties. This Agreement required the payment of monthly rent in full by the end of the day on the first of each month. As there is undisputed evidence that this did not occur, and that the late payments of rent have occurred from July 2018 until May 2019, after which the landlord issued the 1 Month Notice, I find that the landlords had valid reasons to issue the 1 Month Notice for the late payment of rent. There were five occasions when this happened, which exceeds the guidance provided to arbitrators in assessing such matters in RTB Policy Guideline 38. For these reasons, I dismiss the tenant's application to cancel the 1 Month Notice.

As the tenant's application was dismissed as I find that the tenant was repeatedly late in paying their rent, there is no need to consider any of the other reasons cited in the landlords' 1 Month Notice.

Section 55(1) of the *Act* reads as follows:

*If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

Section 47(3) of the *Act* requires that “a notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.”

I am satisfied that the landlords' 1 Month Notice entered into written evidence was on the proper RTB form and complied with the content requirements of section 52 of the *Act*. For these reasons, I find that the landlords are entitled to an Order of Possession. The landlords will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit by 1:00 p.m. on July 31, 2019, the landlords may enforce this Order in the Supreme Court of British Columbia.

As the tenant's application is dismissed, the tenant is not allowed to recover their filing fee from the landlords.

Conclusion

The tenant's application is dismissed in its entirety. The landlords are provided with a formal copy of an Order of Possession effective July 31, 2019. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 04, 2019

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Residential Tenancy Branch